City of Lafayette Staff Report

For:	City Council
By:	Tony Coe, Engineering Services Manager
Date Written:	July 2, 2008
Meeting Date:	July 14, 2008
Subject:	MS503-04, 1751 Reliez Valley Road- Request by Owner to Transfer Certain Improvement Obligations to Buyer

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Background and Discussion

In March 2006, the City Council approved the recordation of a parcel map to subdivide the subject property into two lots. The approval required certain improvements to be made as part of the subdivision, and the owner, Scott Johnston, provided a security to guarantee performance of these improvements. (See attached plan by Schell and Martin.)

The owner since has performed a great majority of the improvements on the lot that he currently occupies with his residence. He has found a buyer, Joseph Egan, for the newly created vacant lot (Parcel B) fronting Toyon Road, a private road, and wishes to transfer the improvement obligations for this new lot to the buyer in the sale. The buyer has indicated acceptance of this transfer. To facilitate the transfer, the City Attorney has drafted two agreements, one for each respective party. The parties have executed the agreement to indicate their acceptance and seek the City Council's approval of this arrangement. The buyer of the vacant lot has additionally provided new security to guarantee performance of the improvements being transferred to him. If the Council approves the agreement, the original subdivider's security will be refunded in the corresponding amount, plus any work that he has satisfactorily completed. Meanwhile, the City continues to hold the original security, which guarantees all the subdivision improvements in full.

Fiscal Impact

The applicant has paid for the City Attorney's cost to draft the agreement. No other direct costs are anticipated.

Recommendation

City Council approves the agreements to allow the property owner to transfer certain subdivision improvement obligations to the buyer of a lot created by an approved subdivision, and authorizes the Mayor to execute the agreements.

FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT FOR SUBDIVISION MS503-04

This First Amendment to the Subdivision Improvement Agreement for Subdivision MS503-04 ("First Amendment") is made as of the 9th day of June, 2008, by and between the City of Lafayette, a California municipal corporation ("City") and Scott and Gail Johnston, ("Subdivider"). The parties are sometimes individually referred to as "Party" and collectively as "Parties."

RECITALS

A. On March 27, 2006, the City and Subdivider entered into a Subdivision Improvement Agreement for Subdivision MS503-04 for the installation of certain improvements ("Agreement") on 2 parcels, also known as assessor parcel numbers 167-070-005 and 167-070-006.

B. Subdivider desires to sell assessor parcel number 167-070-006 ("Adjacent Property") and retain assessor parcel number 167-070-005 ("Property") and bifurcate the improvement obligations as provided for in the Agreement based upon the boundary of each parcel.

C. City and Subdivider desire to amend the Agreement to revise the improvements and security as provided for in Sections 2 and 3 of the Agreement and provide access to the Property in the event the work is not completed.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH IN THIS AMENDMENT AND OTHER VALUABLE CONSIDERATION, THE CITY AND SUBDIVIDER AGREE AS FOLLOWS:

1. Improvements. Paragraph 1 of Section 2 of the Agreement is hereby amended in its entirety to read as follows:

> "2. IMPROVEMENTS. Subdivider agrees to install certain road improvements (both public and private), drainage improvements, signs, street lights, fire hydrants, landscaping, and other improvements (including appurtenant equipment) as provided for in greater detail in Exhibit "A" attached hereto and incorporated herein by reference as reviewed by the City of Lafayette Public Works Department and in conformance with the Contra Costa County Ordinance Code (including future amendments thereto)."

2. Section 3.

A. The amount of security for performance and guarantee as specified in Section 3A of the Agreement is hereby amended in the amount of $0 cash, plus additional security, in the amount of $500, which together total one hundred percent (100%) of the estimated cost of the work.

B. The amount of the payment security as specified in Section 3B of the Agreement is hereby amended in the amount of $250, which is fifty percent (50%) of the estimated cost of the work.

C. In addition, 15% of the total cost of subdivision improvements completed to date on Parcel A ($4,233) will continue to be held by City until December 3, 2008 (one year from City's acceptance of improvements as complete).

3. Section 11. The first two paragraphs of Section 11 are hereby amended in their entirety as follows:

> "11. NON-PERFORMANCE AND COSTS. If Subdivider fails to complete the work within the time specified in this Agreement, and subsequent extensions, or fails to main the work, the owner of the Adjacent Property ("Adjacent Property Owner"), and/or the City may proceed to complete and/or maintain the work by contract or otherwise, and Subdivider agrees to pay all costs and charges incurred by the City (including, but not limited to: engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand. Subdivider hereby consents to entry on the Property by the City, Adjacent Property Owner, and their respective forces, including contractors, in the event City and/or Adjacent Property Owner proceeds to complete and/or maintain the work."

4. No Other Amendments. Except as set forth in this First Amendment to the Agreement, the Agreement remains in full force and effect according to its terms.

5. Incorporation of Amendment. From and after the effective date of this Amendment, wherever the term "Agreement" appears in the Agreement, it shall be read and understood to mean the Agreement as amended by this First Amendment.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first written above.

CITY OF LAFAYETTE

_____

ATTEST:

_____
Joanne Robbins, City Clerk

SUBDIVIDER

_____

_____

_____

(NOTE: All signatures to be acknowledged. If Subdivider is incorporated, signatures must conform with the designated groups pursuant to Corporation Code § 313.)

SUBDIVISION AGREEMENT
(Government Code §664462 and §66463)

Subdivision: MS-503-04 Effective: _____

Subdivider/Property Owner Joseph M. Egan Completion Period: _____

1. PARTIES & DATE. Effective on the above date, the City of Lafayette, California, hereinafter called "City", and the above-named Subdivider/Property Owner ("Subdivider"), mutually promise and agree as follows concerning this subdivision:

2. IMPROVEMENTS. Subdivider agrees to install certain road improvements (both public and private), drainage improvements, signs, street lights, fire hydrants, landscaping and such other improvements (including appurtenant equipment) as provided for in the improvement plans described in greater detail in Exhibit "A" attached hereto and incorporated herein by reference as reviewed and on file with the City of Lafayette Pubic Works Department and in conformance with the Contra Costa County Ordinance Code (including future amendments thereto).

The improvements were originally required by the City as part of a larger scope of work as provided for in the improvement plans for Subdivision MS503-04 and as required by the Subdivision Agreement executed by Scott and Gail Johnston the original Subdivider ("Original Subdivider") and the City dated March 27, 2006. The Original Subdivider who is the property owner of APN 167-070-005 requested that the City divide the work as provided for in improvement plans for Subdivision MS503-04 into two subdivision agreements to be connected with each individual parcel. The City agreed to do so based upon the terms and conditions as further specified in this Agreement and the Original Subdivision Agreement hereinafter defined. Subdivider benefits from the work to be completed on APN 167-070-005. In the event the Original Subdivider does not timely complete the work as provided for in the Subdivision Agreement dated March 27, 2006 and as amended on _____ ("Original Subdivision Agreement"), Subdivider shall be responsible for and shall complete this work as required by the City. City shall not issue a certificate of occupancy for APN 167-070-006, unless and until all work as required by the Original Subdivision Agreement has been completed by either the Original Subdivider and/or the Subdivider.Subdivider shall complete said work and improvements (hereinafter called "work") within the above completion period from date hereof as required by the California Subdivision Map Act (Government Code §66410 and following), in a good workmanlike manner, in accordance with the accepted construction practices and in a manner equal or superior to the requirements of the County Ordinance Code and rulings made thereunder; and where there is a conflict between the improvement plans and the County Ordinance Code, the stricter requirements shall govern.

3. SECURITY. Upon executing this Agreement, the Subdivider shall, pursuant to Government Code §66499 and the County Ordinance Code, provide as security to the City:

A. For Performance and Guarantee: $0 cash, plus additional security, in the amount of $ 26,966.00 which together total one hundred percent (100%) of the estimated cost of the work. Such additional securities presented in the form of:

_____ Cash, certified check, or cashier's check.
_____ Acceptable corporate surety bond.
_____ Acceptable irrevocable letter of credit.

With this security, the Subdivider guarantees performance under this Agreement and maintenance of the work for one year after its completion and acceptance against any defective workmanship or materials or any unsatisfactory performance.

B. For Payment: Security in the amount of $ 13,483.00, which is fifty percent (50%) of the estimated cost of the work. Such security is presented in the form of:

_____ Cash, certified check, or cashier's check.
_____ Acceptable corporate surety bond.
_____ Acceptable irrevocable letter of credit.

With this security, the Subdivider guarantees payment to the contractor, to his subcontractors, and to persons renting equipment or furnishing labor or materials to them or to the Subdivider.

C. Upon acceptance of the work as complete by the City and upon request of the Subdivider, the amount of the securities may be reduced in accordance with §94-4.406 and §94-4.408 of the Ordinance Code.

4. GUARANTEE AND WARRANTY OF WORK. Subdivider guarantees that said work shall be free from defects in material of workmanship and shall perform satisfactorily for a period of one (1) year from and after the City accepts the work as complete in accordance with Article 96-4.6, "Acceptance", of the Ordinance Code. Subdivider agrees to correct, repair or replace, at his expense, any defects in said work.

5. PLANT ESTABLISHMENT WORK. Subdivider agrees to perform plant establishment work for landscaping installed under this agreement. Said plant establishment work shall consist of adequately watering plants, replacing unsuitable plants, doing weed, rodent and other pest control and other work determined by the Public Works Department to be necessary to insure establishment of the plants.

Said plant establishment work shall be performed for a period of one (1) year from and after the City accepts the work as completed.

6. IMPROVEMENT PLAN WARRANTY. Subdivider warrants the improvement plans for the work are adequate to accomplish the work as promised in Section 2 and as required by the Conditions of Approval for the Subdivision. If, at any time before the City accepts the work as complete or during the one year guarantee period, said improvement plans prove to be inadequate in any respect,

Subdivider shall make whatever changes are necessary to accomplish the work as promised.

7. NO WAIVER BY CITY. Inspection of the work and/or materials, or approval of work and/or materials or statement by any Officer, agent or employee of the City indicating the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments therefore, or any combination of all of these acts, shall not relieve the Subdivider of his dedication to fulfill this Agreement as prescribed; nor shall the City be thereby estopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.

8. INDEMNITY. Subdivider shall defend, hold harmless and indemnify the Indemnitees from the liabilities as defined in this section:

A. The Indemnitees benefited and protected by this promise are the City and its elective and appointive boards, commissions, officers, agents and employees.

B. The liabilities protected against or any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation or any combination of these, and regardless of whether or not such liability, claim or damage was unforeseeable at any time before the City reviewed said improvement plans or accepted the work as complete, and including the defense of any suit(s), action(s) or other proceeding(s) concerning said liabilities and claims.

C. The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to the Subdivider, contractor, subcontractor or any officer, agent or employee of one or more of them.

D. Non-Conditions: The promise and agreement in this section are not conditioned or dependent on whether or not any Indemnitee has prepared, supplied or reviewed any plan(s) or specification(s) in connection with this work or subdivision, or has insurance or other indemnification covering any of these matters or that the alleged damage resulted partly from any negligent or willful misconduct of any Indemnitee.

9. COSTS. Subdivider shall pay when due all the costs of the work, including inspections thereof and relocating existing utilities required thereby.

10. SURVEYS. Subdivider shall set and establish survey monuments in accordance with the filed map and to the satisfaction of the City Engineer before acceptance of any work as complete by the City.

11. NON-PERFORMANCE AND COSTS. If subdivider fails to complete the work within the time specified in this Agreement, and subsequent extensions, or fails to maintain the work, the City may proceed to complete and/or maintain the work by contract or otherwise, and Subdivider agrees to pay all costs and charges incurred by the City (including, but not limited to: engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand.

Subdivider hereby consents to entry on the subdivision property by the City and its forces, including contractors, in the event the City proceeds to complete and/or maintain the work.

Once action is taken by City to complete or maintain the work, Subdivider agrees to pay all costs incurred by the City, even if Subdivider subsequently completes the work.

Should City sue to compel performance under this Agreement or to recover costs incurred in completing or maintaining the work, Subdivider agrees to pay all attorney's fees, and all other expenses of litigation incurred by City in connection therewith even if Subdivider subsequently proceeds to complete the work.

12. RECORD MAP. In consideration hereof, City permitted the recordation of the Final Map or Parcel Map for said Subdivision, of which Subdivider benefited from.

(Signatures on the next page)

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CITY OF LAFAYETTE

Mayor of the City of Lafayette

ATTEST:

City Clerk

SUBDIVIDER/Owners

6-11-08

(NOTE: All signatures to be acknowledged. If Subdivider is incorporated, signatures must conform with the designated representative groups pursuant to Corporations Code §313)

* * * * * * * * * * * * * * *

(This area for official notary flags. All signatures must be properly notarized in accordance with Civil Code Section 1180. The names and titles of the people signing the documents must be listed on the notary flag.)

Item 10E

Lafayette Library and Learning Center Foundation RFQ for café space at the Lafayette Library and Learning Center

Staff report to follow.

10E